

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

LINDA FREW, et al.,
Plaintiffs,

v.

CHRIS TRAYLOR, et al.,
Defendants.

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Case No. 3:93-CV-65

**MEMORANDUM OPINION AND ORDER GRANTING DEFENDANTS' MOTION TO
EXCEED PAGE LIMIT (DKT. 1481); DENYING PLAINTIFFS' MOTION FOR
ADDITIONAL TIME TO FILE THEIR REPLY IN SUPPORT OF PLAINTIFFS'
MOTION FOR FURTHER ACTION REGARDING CHECKUP PROVISIONS (DKT.
1437) AND RESPONSE TO DEFENDANTS' MOTION TO VACATE REGARDING
CHECKUP PROVISIONS (DKT. 1446) (DKT. 1483)**

Pending before the court is Defendants' Unopposed Motion to Exceed Page Limit and Plaintiffs' Motion for Additional Time to File Their Reply in Support of Plaintiffs' Motion for Further Action Regarding Checkup Provisions (Dkt. 1437) and Response to Defendants' Motion to Vacate Regarding Checkup Provisions (Dkt. 1446). For the reasons set forth herein, Defendants' motion (Dkt. 1481) is **GRANTED** and Plaintiffs' motion (Dkt. 1483) is **DENIED**.

I. BACKGROUND

On September 17, 2015, the court accepted Plaintiffs and Defendants' proposed schedule for briefing related to the Corrective Action Order: Checkups (Dkt. 637-4), the Corrective Action Order: Managed Care (Dkt. 637-6), and related Degree provisions (Dkt. 1385). On December 21, 2015, in part as a response to Defendants' production of approximately 300,000 pages of documents responsive to Plaintiffs' discovery, the parties filed an agreed motion to re-schedule the court filings at issue (Dkt. 1428). Plaintiff filed their Motion for Further Action Regarding Managed Care Checkup, Checkup Completeness and No-Care Provisions of the Decree and

Corrective Action Order (the “Motion to Enforce”) in accordance with the agreed schedule on January 22, 2016 (Dkt. 1437).

According to the agreed-upon schedule, Defendants were set to file their Rule 60(b)(5) Motion to Vacate the Checkup CAO, the Managed Care CAO, and related Decree provisions/Response to Plaintiffs’ Motion to Enforce on or before March 4, 2016. Defendants sought leave to exceed the page limit with regards to their filing. The parties conferred via email on March 3, 2016, and Plaintiffs stated that they did not necessarily agree that the length of the motion/response was appropriate because they had not yet seen it, but assuming it was appropriate, did not object to a motion to exceed the page limit.¹

The following day, March 4, 2016, Defendants filed their Motion to Exceed Page Limit as “unopposed,” though the certificate of conference highlighted Plaintiffs’ reservations (Dkt. 1481). Also on March 4, 2016, Defendants filed their Rule 60(b)(5) Motion to Vacate the Corrective Action Order: Managed Care, the Corrective Action Order: Check Ups, and Related Consent Decree Paragraphs; Defendants’ Response in Opposition to Plaintiffs’ Motion for Further Action Regarding Managed Care Checkup, Checkup Completeness and No-Care Provisions of the Decree and Corrective Action Order [Dkt. 1437] (Dkt. 1446). This motion is 162 pages long and is accompanied by approximately 10,800 pages of attachments.

On March 25, 2016, Plaintiffs filed an Opposition to Defendants’ Motion to Exceed Page Limit or, in the alternative, Motion for Additional Time to File Their Reply in Support of Plaintiffs’ Motion for Further Action Regarding Checkup Provisions and Response to Defendants’ Motion to Vacate Regarding Checkup Provisions (Dkt. 1483). Plaintiffs argue that though they conditionally agreed not to oppose the Motion to Exceed Page Limit, after having reviewed Defendants’ filing, they oppose the motion based on the “inappropriate size of the

¹ Dkt. 1481 at 3.

filing.”² On March 28, 2016, Defendants filed a response to Plaintiffs’ motion (Dkt. 1485). On April 1, 2016, Plaintiffs filed a supplement to their motion (Dkt. 1486), and on April 5, 2016, Defendants filed a response to the supplement (Dkt. 1488). On April 14, 2016, Plaintiffs filed their Response to Defendants’ Rule 60(b)(5) Motion and Reply in support of Plaintiffs’ Motion to Enforce (Dkt. 1491). On May 13, 2016, Defendants filed their Reply in support of their Rule 60(b)(5) Motion to Vacate and Sur-reply to Plaintiffs’ Motion to Enforce (Dkt. 1495). On June 8, 2016, Plaintiffs filed their Sur-reply to Defendants’ Rule 60(b)(5) Motion to Vacate (Dkt. 1496).

The court found the agreed motion to re-schedule was acceptable (Dkt. 1507). The court notes that according to the docket sheet, all the above deadlines were met.

II. ANALYSIS

The court grants Defendants’ Motion to Exceed Page Limit. Plaintiffs do not argue that excess pages are not necessary, but merely assert that the particular size of the filing is “inappropriate,” particularly in light of the response time available to Plaintiffs under the briefing schedule.³ Plaintiffs accuse Defendants of using the sheer volume of the motion in order to gain further advantage.⁴ The court agrees with Defendants that excess pages are necessary to adequately respond to Plaintiffs’ Motion for Further Action and to present argument in support of their Rule 60(b)(5) motion.

Defendants contend that nothing has changed since the parties agreed to a schedule, and further, that Plaintiffs are aware, or should be aware, that this case has consistently involved lengthy briefs and numerous exhibits.⁵ As proof of this proposition, Defendants cite motions of

² Dkt. 1483 at 2.

³ Dkt. 1483 at 4.

⁴ Dkt. 1483 at 4.

⁵ Dkt. 1485 at 8-9.

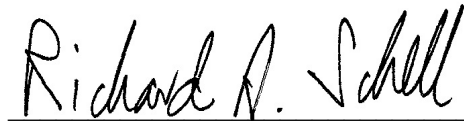
50, 52, 58, 102, and 115 pages in length.⁶ The court finds that the parties were capable of maintaining, and did maintain, the briefing schedule agreed upon by the parties.⁷

III. CONCLUSION

Defendants' Unopposed Motion to Exceed Page Limit (Dkt. 1481) is, therefore, **GRANTED** and Plaintiffs' Motion for Additional Time to File Their Reply in Support of Plaintiffs' Motion for Further Action Regarding Checkup Provisions (Dkt. 1437) and Response to Defendants' Motion to Vacate Regarding Checkup Provisions (Dkt. 1446) (Dkt. 1483) is **DENIED**.

IT IS SO ORDERED.

SIGNED this the 21st day of June, 2016.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

⁶ Dkt. 1485 at 8.

⁷ Dkt. 1428.